

APPEAL NO. 93090

A contested case hearing was held in (city), Texas, on December 21, 1992, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) did not sustain a compensable injury in the course and scope of his employment and that his inability to work after February 14, 1992, was due to reasons other than a (date of injury) work related injury. Accordingly, he denied benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). Claimant urges error in the determination that he did not sustain a compensable injury and that he had not suffered disability in that the hearing officer "failed to weigh the evidence in light most favorable of the claimant," and asks that the decision be reversed. Respondent (carrier) requests that the decision and order of the hearing officer be affirmed.

DECISION

Finding the evidence of record sufficient to support the determinations of the hearing officer, his decision and order are affirmed.

The pertinent evidence is set forth fairly and adequately in the hearing officer's Decision and Order and is adopted herein. Succinctly, the claimant had worked since May 16, 1991 for a temporary employment agency with duties at a client's place of business that included the lifting of boxes weighing 70 to 80 pounds. He claims he injured his back while lifting a box on (date of injury), but that he continued working until February 14, 1992. Although the injury was not witnessed, a coworker testified the claimant told him he was feeling badly on (date of injury). The claimant testified, through an interpreter, that he reported his injury to a supervisor and was given lighter work to perform for the remainder of the week. He claims he reported his injury to the temporary employment agency but was refused permission to go to a doctor. A transcribed interview of the agency's human resources manager indicates that no report of a (date of injury), injury was made. There was also evidence that the claimant had filed a workers' compensation claim on or about June 16, 1991 alleging the same or similar injury resulting from the same employment. As argued by the carrier, the medical records submitted are sparse in indicating the claimant's work status and completely diagnosing his claimed injury. Carrier introduced photographs purportedly taken on May 20, 1992, depicting the claimant carrying supplies to perform remodeling work on a church of which he was the pastor.

A claimant in a workers' compensation case has the burden to prove the allegations of his claim by a preponderance of the evidence. Abeyta v. Travelers Insurance Co., 566 S.W.2d 708 (Tex. Civ. App.-Amarillo 1978, writ dismissed); Martinez v. Travelers Insurance Co., 543 S.W.2d 911 (Tex. Civ. App.-Waco 1976, no writ). He has the burden of proving that an injury was sustained in the course of his employment. Parker v. Employers Mutual Liability Insurance Co. of Wisconsin, 440 S.W.2d 43 (Tex. 1969). The hearing officer here, as the finder of fact, quite apparently did not find a preponderance of the evidence to weigh in the claimant's favor. Under the 1989 Texas Workers'

Compensation Act, the hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Article 8308-6.34(e). Our review of the evidence leads us to conclude that there is sufficient evidence to support the hearing officer's decision in this case. Only were we to find, which we do not, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly

unjust would reversal or other corrective action be appropriate. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Texas Workers' Compensation Appeal No. 92232, decided July 20, 1992. The decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge